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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
--X
REGINALD STEVE,

Plaintiff,

-against-

ACCURATE CARPET CLEANING AND MAINTENANCE, INC. and GENNARO PRIOLO,

Defendants.
--X

Case No.:

COMPLAINT AND
JURY DEMAND

Plaintiff REGINALD STEVE, by and through his undersigned attorney, for his complaint against ACCURATE CARPET CLEANING AND MAINTENANCE, INC. and GENNARO PRIOLO, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff REGINALD STEVE alleges that they are entitled to (i) unpaid wages from Defendant, and (ii) liquidated damages pursuant to the FLSA, 29 U.S.C. §§ 201 *et seq.*, because defendant violations were willful.

2. Plaintiff REGINALD STEVE further complains that he is entitled to (i) compensation for defendant's failure to pay for all hours worked; (ii) liquidated damages pursuant to New York Labor Law for these violations, and (iii) statutory damages for violations

of the Wage Theft Prevention Act.

THE PARTIES

3. Plaintiff REGINALD STEVE is an adult individual residing in Staten Island, New York.

4. Upon information and belief, defendant ACCURATE CARPET CLEANING AND MAINTENANCE INC. ("ACCURATE") is a New York corporation with a principal place of business at 37 Potter Avenue, Staten Island, New York 10314.

5. At all relevant times, defendant ACCURATE has been, and continues to be, an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

6. Upon information and belief, at all relevant times, ACCURATE had a gross revenue in excess of $500,000.00.

7. Upon information and belief, at all relevant times herein, ACCURATE has used goods and materials produced in interstate commerce and has employed at least two individuals who handled such goods and materials on a regular basis.

8. As an individual employee working for ACCURATE, plaintiff handled or otherwise worked on goods or materials that have moved in interstate commerce.

9. Upon information and belief, at all times relevant herein, defendant ACCURATE have constituted an "enterprise" as defined in the FLSA.

10. Upon information and belief, at all times relevant herein, defendant Plaintiff constituted an "individual worker" as defined in the FLSA.

11. Upon information and belief, defendant GENNARO PRIOLO is an owner and

principal of ACCURATE, who has the power to hire and fire employees, set wages and schedules, and retain their records.

12. Defendant GENNARO PRIOLO was involved in the day-to-day operations of ACCURATE and played an active role in managing the business.

13. Defendant GENNARO PRIOLO constituted an "employer" of plaintiff as that term is used in the Fair Labor Standards Act and New York Labor Law.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over plaintiff REGINALD STEVE's state law claims pursuant to 28 U. S.C. § 1367. In addition, the Court has jurisdiction over plaintiff REGINALD STEVE's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

15. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because defendants' business is located in this district.

FACTS

16. At all relevant times herein, defendants owned and operated a residential and commercial cleaning service.

17. From approximately September 2014 through July of 2015 and January 2016 through June 2016, plaintiff REGINALD STEVE was employed by defendants to do various commercial and residential cleaning jobs including washing windows, cleaning carpets, removing debris such a broken glass, sewage leak clean-up, floor buffing, upholstery cleaning, and bio-hazard clean up.

18. The jobs took place primarily in the five boroughs of New York City, and Nassau

and Suffolk Counties.

19. During the aforementioned dates of employment, the plaintiff worked exclusively for defendant ACCURATE.

20. Plaintiff REGINALD STEVE work was performed in the normal course of defendants' business and was integrated into the business of the defendants, and did not involve executive or administrative responsibilities.

21. At all relevant times herein, plaintiff REGINALD STEVE was an employee engaged in commerce as defined in the FLSA and its implementing regulations.

22. During the course of plaintiff REGINALD STEVE's employment with defendants, he routinely worked six days per week.

23. During the course of plaintiff REGINALD STEVE's employment with defendants, he worked on Sundays once a month.

24. From September 2014 through July of 2015 and January 2016 through June 2016, plaintiff REGINALD STEVE worked 10 hours per day, Mondays through Saturdays.

25. From September 2014 through July of 2015 and January 2016 through June 2016, plaintiff REGINALD STEVE worked 10 hours once a month on a Sunday.

26. As a result, plaintiff REGINALD STEVE worked (60) hours per week for three weeks of the month from September 2014 through July of 2015 and January 2016 through June 2016.

27. As a result, plaintiff REGINALD STEVE worked (70) hours per week for one week of the month from September 2014 through July of 2015 and January 2016 through June 2016.

28. During this time period, plaintiff REGINALD STEVE got to work at 37 Potter Avenue, Staten Island, New York 10314 at 7:00 a.m. for the purposes of picking up work equipment.

29. At the conclusion of each work day, plaintiff REGINALD STEVE was required to return the work equipment to 37 Potter Avenue, Staten Island, New York 10314.

30. Upon being hired to work for ACCURATE, defendant GENNARO PRIOLO promised the plaintiff a commission for each job ranging in the amount of $20.00 to $45.00 and an hourly rate of $15.00. Defendant GENNARO PRIOLO also advised the plaintiff that he would be reimbursed for expenses such as parking in New York City.

31. That defendant GENNARO PRIOLO trained the plaintiff to use the cleaning equipment owned by ACCURATE.

32. Upon being hired to work for ACCURATE, defendant GENNARO PRIOLO advised the plaintiff that he must exclusively work for defendant ACCURATE.

33. Generally, plaintiff REGINALD STEVE worked on two to four different cleaning jobs per day during his employment with ACCURATE.

34. From September of 2014 through December 31, 2014, ACCURATE paid the plaintiff $5,304.00 for his work.

35. From September of 2014 through December 31, 2014, defendant GENNARO PRIOLO paid the plaintiff approximately $300.00 in cash and personal checks for his work.

36. That neither defendant ACCURATE nor GENNARO PRIOLO withheld taxes from the plaintiff's paid wages.

37. From January of 2015 to July of 2015, defendant ACCURATE paid the plaintiff

$6,135.00 for his work.

38. From January of 2015 to July of 2015, defendant GENNARO PRIOLO paid the plaintiff approximately $1,400.00 in cash and personal checks for his work.

39. That neither defendant ACCURATE nor GENNARO PRIOLO withheld taxes from the plaintiff's paid wages.

40. From September 2014 through July of 2015, plaintiff would request his unpaid wages and disbursements from defendant GENNARO PRIOLO. Defendant GENNARO PRIOLO advised the plaintiff that he was considered "family" and that plaintiff would be compensated.

41. At the end of July of 2015, the plaintiff requested that GENNARO PRIOLO provide him with proper equipment for bio-hazard clean up including masks and coveralls.

42. That defendant GENNARO PRIOLO advised the plaintiff that "no other employee is complaining."

43. Thereafter, plaintiff ceased working for defendants and attempted to procure other and safer employment.

44. Desperate for work at the end of 2015, the plaintiff once again began working for defendants.

45. From January of 2016 to June of 2016, defendant ACCURATE paid the plaintiff approximately $6,000.00 for his work.

46. From January of 2016 to June of 2016, defendant GENNARO PRIOLO paid the plaintiff approximately $1,400.00 in cash and personal checks for his work.

47. To date, plaintiff has not received a statement of his 2016 wages.

48. At the end of June of 2016, the plaintiff demanded to defendant GENNARO PRIOLO that he be paid his owed back wages.

49. That defendant GENNARO PRIOLO advised the plaintiff that "I can't pay you if I don't get paid" and that "no other employee is complaining."

50. That the wages paid to the plaintiff by defendants were below minimum wage.

51. Defendants willfully failed to pay plaintiff REGINALD STEVE the overtime "bonus" for hours worked beyond 40 hours in a workweek, in violation of the FLSA, the New York Labor Law, and the supporting New York State Department of Labor regulations.

52. That Defendants illegally and/or impermissibly categorized the plaintiff as an independent contractor.

53. Defendants failed to provide Plaintiff REGINALD STEVE with a written notice of his regular rate of payor overtime rate of pay, in violation of New York Labor Law § 195.1 and the Wage Theft Prevention Act.

54. Plaintiff REGINALD STEVE was paid in cash and checks, and defendants failed to provide Plaintiff REGINALD STEVE with a record of his compensation or his hours worked, in violation of the Wage Theft Prevention Act.

55. Upon information and belief, while defendants employed Plaintiff REGINALD STEVE and throughout all relevant time periods, defendants failed to maintain accurate sufficient time records.

56. Upon information and belief, while Defendants employed Plaintiff REGINALD STEVE and through all relevant time periods, defendants failed to post or keep posted a notice explaining the overtime pay rights provided by the FLSA or New York Labor Law.

COUNT I

(Fair Labor Standards Act - Minimum Wage)

57. Plaintiff REGINALD STEVE repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

58. At all relevant times, defendants employed Plaintiff REGINALD STEVE within the meaning of the FLSA.

59. Defendant failed to pay wages equal to or greater than the minimum wage to Plaintiff REGINALD STEVE for all hours worked.

60. As a result of Defendant's willful failure to compensate Plaintiff REGINALD STEVE at a rate at least equal to the federal minimum wage for each hour worked outside of exempt employment, Defendant has violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. § 206.

61. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

62. Due to Defendant's FLSA violations, Plaintiff REGINALD STEVE is entitled to recover from Defendant their unpaid compensation plus liquidated damages, reasonable attorneys fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

COUNT II

(New York Labor Law - Minimum Wage)

63. Plaintiff REGINALD STEVE, repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

64. At all relevant times, Plaintiff REGINALD STEVE was employed by the

defendant within the meaning of New York Labor Law, §§ 2 and 651.

65. Defendant willfully violated Plaintiff REGINALD STEVE's rights and the rights of the members of the class by failing to pay them an amount equal to the minimum wage in violation of New York Labor Law §§ 190-199, 652 and their regulations.

66. Due to defendant's New York Labor Law violations, Plaintiff REGINALD STEVE and the members of the class are entitled to recover from defendant their unpaid compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 663(1).

COUNT III

(Fair Labor Standards Act - Overtime)

67. At all relevant times, defendants employed Plaintiff REGINALD STEVE within the meaning of the FLSA.

68. At all relevant times, defendants had a policy and practice of refusing to pay overtime compensation to their employees for hours they worked in excess of forty hours per workweek.

69. As a result of defendants' willful failure to compensate Plaintiff REGINALD STEVE, at a rate not less than one-and-one-half times the regular rate of pay for work performed in excess of forty hours per workweek, defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201 et *seq.*, including 29 U.S.C. §§ 207(a) (1) and 215(a).

70. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

71. Due to defendants' FLSA violations, Plaintiff REGINALD STEVE are entitled to

recover from defendants his unpaid overtime compensation, an additional equal amount as liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

COUNT IV

(New York Labor Law - Overtime)

72. Plaintiff REGINALD STEVE, repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

73. At all relevant times, Plaintiff REGINALD STEVE and the members of the class were employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

74. Defendants willfully violated Plaintiff REGINALD STEVE's rights by failing to pay him overtime compensation at rates not less than one-and-one-half times the regular rate of pay for each hour worked in excess of forty hours per workweek in violation of the New York Labor Law §§ 650 et *seq.* and its supporting regulations in 12 N.Y.C.R.R § 137.

75. Defendants failure to pay overtime was willful within the meaning of New York Labor Law § 663 and supporting regulations.

76. Due to defendants New York Law or Law violations, Plaintiff REGINALD STEVE is entitled to recover from defendants their unpaid overtime compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 663(1).

COUNT V

(New York Labor Law - Failure to Pay Wages)

77. Plaintiff REGINALD STEVE repeats, realleges, and incorporates by reference the

foregoing allegations as if set forth fully and again herein.

78. At all relevant times, Plaintiff REGINALD STEVE was employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

79. Defendants willfully violated Plaintiff REGINALD STEVE's rights, and the rights of the members of the class, by failing to pay them wages owed for all hours worked, in violation of New York Labor Law § 191 and its implementing regulations.

80. Defendants' failure to pay wages was willful within the meaning of New York Labor Law § 198 and supporting regulations.

81. Due to defendants' New York Labor Law violations, Plaintiff REGINALD STEVE is entitled to recover from defendants their unpaid compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 663(1).

PLAINTIFF DEMANDS TRIAL BY JURY

PRAYER FOR RELIEF:

WHEREFORE, Plaintiff REGINALD STEVE respectfully requests that this Court grant the following relief:

a. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the New York Labor Law;

b. An injunction against defendants officers, agents, successors, and their employees, representatives, and any and all persons acting in concert with them, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;

c. A compensatory award of unpaid compensation, at the statutory overtime rate, due under the FLSA and the New York Labor Law;

d. An award of liquidated damages as a result of defendants' willful failure to pay the statutory overtime compensation pursuant to 29 U.S.C. § 216;

e. A compensatory award for unpaid wages;

f. Liquidated damages for defendants' New York Labor Law violations;

g. Statutory damages for defendants' violation of the New York Wage Theft Prevention Act;

h. Back pay;

i. Punitive damages;

j. An award of prejudgment and post judgment interest;

k. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and

l. Such other, further, and different relief as this Court deems just and proper.

Dated: Brooklyn, New York
March 24, 2017

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